STATE OF MAINE
PUBLIC UTILITIES COMMISION
242 STATE STREET
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AUGUSTA, MAINE
04333-0018

June 8, 2009

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

Enclosed is the Declaration of Joel Shifman on behalf of the Maine Public Utilities Commission, filed in response to the Comments of Qwest and Embarq and in response to the Declaration made on behalf of Verizon by Mr. Garzillo and Mr. Buzacott. Please file a copy of this declaration in Docket CC 96-45 and WC Docket No. 05-337.

Please contact me if you have any questions regarding this submission.

Respectfully submitted

Joel B. Shifman

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of High-Cost Universal Service Support	))	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)))	CC Docket No. 96-45

REPLY DECLARATION
ON BEHALF OF JOEL SHIFMAN
OF THE MAINE PUBLIC UTILITIES COMMISSION

Dated: June 8, 2009

Joel Shifman, Esq.
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DECLARATION OF JOEL B. SHIFMAN

My education and work experience is described in an attachment to this declaration. In addition, I have been a member of the NARUC Staff Committee on Telecommunications and Toll Rate Disparity (which is now the NARUC Staff Subcommittee on Telecommunications) for over 30 years. Since its inception, that subcommittee has dealt with telecommunications matters involving interstate/intrastate jurisdictional issues. I have also been a staff member of the Federal-State Joint Board on Separations, which deals with jurisdictional issues, since the 1980s and was the lead state staff person interacting with the FCC when the separations Joint Board recommended the establishment of the so-called 10% rule, which deals with the jurisdictional treatment of mixed use private lines. I was also the lead attorney for the Public Service Commission of West Virginia before the United States Supreme Court in *Louisiana Public Service Commission v. FCC, 476* U.S. 355 at 366 (1986), in which the United States Supreme Court reversed the United States Court of Appeals for the Fourth Circuit finding that "federal purpose" could not be used to preempt the jurisdictional authority reserved by the states at 47 U.S.C. section 152(b). I have also followed the evolution of the public switched network and have read and studied the "Notes of the Network" and its predecessor documents for at least 30 years. In addition to the experience listed in the attachment, I have attended and taught numerous courses sponsored by such entities as NYNEX, USTA and the Joint Board on Separations of the Federal Communications Commission, which dealt with jurisdictional issues and the determination of jurisdiction. The earliest of these courses was held over 20 years ago, and the latest was held this past summer.

The comments of Embarq and Qwest, as well as the changing nature of telecommunications markets, have convinced me that the amount of Federal support should be adjusted to reflect the level of contribution differences contribution differences that currently exist within a state or study area. For non-rural carriers, the largest differences are caused by using state-wide or study-area wide retail subscriber rates for basic service. This generates large contributions to common cost from urban areas and allows rural areas to be served with smaller contributions or even with a subsidy that allows rates to fall below marginal cost. This is usually called the "implicit subsidy" problem. The subsidy is largest when a state or study area has high rural costs and when there are a large number of rural lines.

In Maine the forward looking monthly cost of exchange service varies from a low of about $18 a month in Portland to over $423 a month in the Forks exchange even though the monthly rate is the same in both areas. In West Virginia the forward looking cost of exchange service varies from a low of $18 a month in Charleston to a high of about $123 a month in the Brandywine exchange even though the rates are identical. The subsidy can be even larger in states with value-of-service pricing where urban rates are higher than rural rates because customers in urban exchanges can call more customers without a toll charge. In Pennsylvania, a value of service state, monthly rates in downtown Philadelphia are $16 for local service per month plus a $5.91 SLC and

unseparated costs are between $14 to $18, but in Ulysses, Pennsylvania monthly rates are $12 a month plus the $5.91 SLC but unseparated costs are over $99 a month.

The increased level of the competition now being experienced in urban areas makes it necessary to remove the implicit subsidies and replace them with explicit subsidies that are generated by state and federal universal service funds. So long as urban ILEC customers are forced to make large contributions to customers in rural areas, the ILECs will lose urban customers to competitors with lower average costs who do not serve high cost rural areas. These competitors often provide services that ride on broadband or cable facilities, including cable voice service. This kind of competition gives ILECs an incentive to reduce urban rates and increase rural rates, placing in jeopardy the comparability requirements of section 254(b)(3).

An implicit subsidy can also exist for access rates. For those states with statewide averaged access rates, access subsidies are also more likely to exist in non-rural study areas that serve a large number of geographically dispersed rural areas in relatively large LATAs. These subsidies are currently implicit within averaged access rates, and they are not funded by the Federal USF even when they are extremely large. Like local rate subsidies, access subsidies are not sustainable because competitive interexchange carriers serving only low cost and urban and suburban areas will use their own lower cost transport facilities.

While a state universal service fund can be used to make explicit the implicit subsidies existing within a state, the capacity of those state universal funds is not unlimited. A state might need to generate a large state USF fund to eliminate the urban-rural subsidy if the state has relatively high average costs and has a small or moderate percentage of urban customers.

No matter how large a state fund gets, it may never be able to comply with the comparability requirements of the Act. In a state with high average costs, introducing any state surcharge on intrastate services runs the risk making the total customer cost non-comparable to national urban rates. Also, where there is a large urban-rural implicit subsidy, making that subsidy explicit might require such a large state USF surcharge that, once again, the total customer rates in that state may no longer be comparable to those in urban areas nationally. The Qwest Study area in Wyoming is an extreme example of this situation.

A large USF surcharge can have practical as well as legal consequences. A customer required to pay large state USF surcharges or larger per line USF surcharges may abandon landline service in favor of having wireless service only if that customer has only a limited amount of funds to spend on telecommunications service.

The shortcoming of relying solely on study area or statewide average costs to calculate sufficient Federal support can be remedied in one of two ways.

The first approach is to adopt a three-part support model. The first part of that support model, Part A, addresses the high statewide average costs. The second part of the support model, Part B, is a new mechanism that provides support to make explicit the current urban-to-rural subsidies that are implicit within a local subscriber's rates.

The third part of this support model, Part C, requires a contribution from a state fund toward the total support need that is generated in that state. Part C of the support model assumes the existence of a state explicit USF fund and relies on that state fund as the first source for USF funding. However, the amount of that state fund's contribution toward the total need is capped two ways, as explained in the example below.

The chart which is attached as "Table A," demonstrates how this new support model operates using cost examples from three states. "Part A" of the support model generates USF funds to reduce statewide average costs to the national cost benchmark. The benchmark I suggest using for this calculation is $20.

"Part B" of the support model provides for additional USF funds to limit the average per line implicit subsidy drawn from urban customers. I suggest a benchmark for this calculation of $5 per month per urban line. The total USF needed for the state or study area is the sum of "Part A" and "Part B" support amounts.

In Part C, the total USF need is allocated between state-generated and federal-generated USF components. The state contribution should be capped two ways.

First, I suggest a state USF cap of $4.00 per line per month. That would represent a fairly high level of effort for a state USF fund, but it would nevertheless be reasonable and consistent with the 1999 recommendation of the Universal Service Joint Board (Universal Service Joint Board Decision May 12, 1999 page 8). A larger state fund would be unlikely to be politically sustainable within a state and may by itself defeat the comparability requirements of section 254(b)(3)

Second, another cap should be implemented. The funds used to make explicit the current implicit subsidies should be limited in high-cost states. If a state already has high average costs, its explicit contribution through a state USF fund should be capped and those implicit subsidies should be funded by the Federal USF. It would violate the principle of reasonably comparable rates and the principle of affordability if a state that already has high average costs were required to overlay its rates with a large state universal service surcharge.

As an alternative to the method described above, I propose a second and completely alternative approach to solving the problem of limiting state support from urban to rural lines. This second support model is simpler but also solves another problem: the fact that a state with a very high proportion of urban customers may be able to fund a portion of its high cost fund with a relatively small USF surcharge on urban lines, even the when the rural line cost is relatively high.

This second approach involves multiplying the statewide average support amount necessary to support statewide average costs above the urban benchmark ("Part A") by the ratio of a state's rural lines to its urban lines. Thus, a state with relatively few urban lines will receive a weighted federal subsidy of greater than "Part A" and a state with many urban lines and few rural lines will receive less than "Part A" support amounts. This adjustment to "Part A" costs reflects the fact that states with a proportionally higher number of urban lines can subsidize some high statewide average costs with a relatively low USF surcharge per urban line. Those same states have the ability to make implicit support explicit without the necessity of much Federal support. The reductions to the federal support needed for those states with proportionally high numbers of urban lines will allow the additional funds for those areas with proportionally higher numbers of rural lines without the necessity of greatly increasing the total national fund size.

I have also reviewed and studied the comments by Verizon and the declarations, tables, and analysis provided by Patrick Garzillo and Alan J. Buzacott. Neither declaration demonstrates that the existing support amounts meet the sufficiency requirements of section 254(b)(3). While those declarations may show that the "raw" or unadjusted tariffed rates may be somewhat close to one another throughout the country, the comparison of those unadjusted rates provided by Verizon's two declarations fail to prove comparability for the reasons set forth on pages 14-17 of the Maine Commission's initial comments, and the Maine Public Advocates comments at pages 28 to 30. In addition Mr. Garzillo's and Mr. Buzacott's analysis totally ignores the service comparability requirements mandated by Section 254(b)(3).

Section 254 requires both rate and service comparability between urban and rural areas. Rate comparisons alone cannot show that support is sufficient under Section 254(b) because they say nothing about the sufficiency or level of the services that the rates pay for. My examination of the ARMIS and annual reports reveals that carriers that are able to provide advanced services generally have less depreciated (i.e. newer) plant than carriers with older plant. Since lower unadjusted rates result in part from lower embedded costs caused by depreciated older plant, the Commission should not assume the services provided by that older depreciated plant are capable of providing services comparable to those provided by newer plant. Many rural carriers are able to provide DSL or faster broadband services on a company-wide basis because their plant is newer. The only way to normalize for the plant vintage and service capability differences is to use forward-looking cost studies for support purposes and comparability comparisons. Those studies, by design, provide for the same level of service in all service areas and for all companies.

AFFIRMATION

I affirm that the foregoing is true to the best of my knowledge, information, and belief.

Executed on June 8, 2009

Joel B. Shifman

Biography

Joel B. Shifman is currently a Senior Advisor with the Maine Public Utilities Commission. He has served on NARUC Staff Subcommittee from 1977 to Present and is the Chairman Regulatory Methodologies Sub-Group. He has also been on the Staff of the Federal State Joint Board on Separations from 1987 to Present and on the Staff of the Federal-State Joint Board on Universal Service from 1999 to present. Prior to joining the Maine Public Utilities Commission Staff, he was the General Counsel of the Maine Public Advocate. Prior to that, he was a Telecommunications Attorney, Rate Analyst, and Hearing Examiner with the Public Service Commission of West Virginia in Charleston, West Virginia from June 1975 to August 1985.

Mr. Shifman is a graduate of the West Virginia University School of Law and holds a Batchelor's degree from Carnegie Mellon University in Pittsburgh, Pennsylvania.

Table A to Reply Comments of Joel Shifman - May 2009

	Facts		Part A Support for high rural costs		Part B - Support to Limit Urban Subsidy			Part C - Allocation of USF Effort						
			Need Benchmark	20.00		Urban Subsidy Benchmark	$ 5.00			Average Rural Effort Cap			$ 30.00	
										State Effort Benchmark			$ 4.00	
Case No.	Lines	Cost per line per month	Max allowed cost per line	Support Need	Cost after Part A support	Urban subsidy out per line	Max allowed subsidy per line	Support Need	Cost per line per month	Part A support	Deaveraged rate after support	State headroom for effort	Capped state effort	Part A and B Support need	Support from federal USF
Standard case															
Urban	40	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	60	$ 50.00		$ 23.33					$ 50.00	$ 23.33	$ 26.67	$ 3.33			
Total	100														
Average		$ 34.00	$ 20.00	$ 14.00	$ 20.00			$ 2.00					$ 3.33	$ 16.00	$ 12.67
A. Very urban cost															
Var. 1															
Urban	40	$ 5.00				$ 15.00	$ 5.00	$ 10.00							
Rural	60	$ 50.00		$ 20.00					$ 50.00	$ 20.00	$ 30.00	$ -			
Total	100														
Average		$ 32.00	$ 20.00	$ 12.00	$ 20.00			$ 4.00					$ -	$ 16.00	$ 16.00
Var. 2															
Urban	40	$ 14.00				$ 6.00	$ 5.00	$ 1.00							
Rural	60	$ 50.00		$ 26.00					$ 50.00	$ 26.00	$ 24.00	$ 6.00			
Total	100														
Average		$ 35.60	$ 20.00	$ 15.60	$ 20.00			$ 0.40					$ 4.00	$ 16.00	$ 12.00
B. Very rural cost															
Var. 3															
Urban	40	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	60	$ 40.00		$ 13.33					$ 40.00	$ 13.33	$ 26.67	$ 3.33			
Total	100														
Average		$ 28.00	$ 20.00	$ 8.00	$ 20.00			$ 2.00					$ 3.33	$ 10.00	$ 6.67
Var. 4															
Urban	40	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	60	$ 100.00		$ 73.33					$ 100.00	$ 73.33	$ 26.67	$ 3.33			
Total	100														
Average		$ 64.00	$ 20.00	$ 44.00	$ 20.00			$ 2.00					$ 3.33	$ 46.00	$ 42.67
C. Very Urban/rural lines															
Var. 5															
Urban	90	$ 10.00				$ 4.00	$ 5.00	$ -							
Rural	10	$ 50.00		$ -					$ 50.00	$ -	$ 50.00	$ -			
Total	100														
Average		$ 14.00	$ 20.00	$ -	$ 14.00			$ -					$ -	$ -	$ -
Var. 6															
Urban	60	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	40	$ 50.00		$ 15.00					$ 50.00	$ 15.00	$ 35.00	$ -			
Total	100														
Average		$ 26.00	$ 20.00	$ 6.00	$ 20.00			$ 3.00					$ -	$ 9.00	$ 9.00
Var. 7															
Urban	50	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	50	$ 50.00		$ 20.00					$ 50.00	$ 20.00	$ 30.00	$ -			
Total	100														
Average		$ 30.00	$ 20.00	$ 10.00	$ 20.00			$ 2.50					$ -	$ 12.50	$ 12.50
Var. 8															
Urban	30	$ 10.00				$ 10.00	$ 5.00	$ 5.00							
Rural	70	$ 50.00		$ 25.71					$ 50.00	$ 25.71	$ 24.29	$ 5.71			
Total	100														
Average		$ 38.00	$ 20.00	$ 18.00	$ 20.00			$ 1.50					$ 4.00	$ 19.50	$ 15.50